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WEED AND WORK:

Hashing Out Marijuana Laws

Susan K. Tvrdy

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In the news...

Omaha dad finds pot brownies, eats 4 of

them, says mean things to cat

By Kevin Cole // World-Herald staff writer

Aug 22, 2015

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Today's Discussion

• Is marijuana use legal?

– Federal law


– State law

– Case law

• How do changes to marijuana laws

impact the workplace?

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OVERVIEW/BACKGROUND



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Chemicals

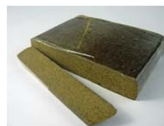
- More than 100 different chemicals called cannabinoids. Two common chemicals in marijuana used in medicine:
 - tetrahydrocannabinol ("THC")
 - THC = "High"
 - Cannabidiol ("CBD")

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Forms

- Weed
- Hashish
- Hashish Oil
- Edibles
- Cannabidiol ("CBD") Oil
- Cannabis Capsules



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Medical Marijuana

- Research suggests it may:
 - Reduce anxiety and inflammation;
 - Provide pain relief, control nausea and vomiting from chemotherapy;
 - Kill cancer cells and slow tumor growth;
 - Relax muscles; and
 - Stimulate appetites.
- FDA recently approved for seizure disorders

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CURRENT LEGAL STATUS



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Federal Law

- Schedule 1 substance
- Marijuana Enforcement Memo
- Farm Bill
- Drug-Free Workplace Act



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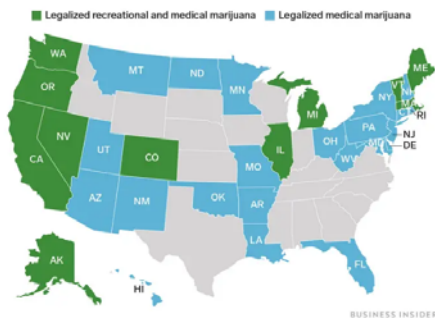
State Law: Medical Marijuana

- State Laws
 - Most require licensed physician to provide written recommendation/prescription
 - Most have a list of qualifying conditions
 - Some require a medical marijuana ID Card

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States where marijuana is legal



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Nebraska

- 190,000 voter signatures gathered for constitutional medical marijuana amendment ballot initiative
- *State ex rel. Wagner v. Evnen*

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Iowa Marijuana Law

- Medical Cannabidiol Act
- Iowa Drug Testing Laws



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Marijuana-Related Case Law

- *Cotto v. Ardagh Glass Packing, Inc.*
- *Noffsinger v. SSC Niantic Operating Co., LLC*
- *Chance v. Kraft Heinz Foods Co.*

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Marijuana-Related Case Law

- *Barbuto v. Advantage Sales & Mktg., LLC*
- *Callaghan v. Darlington Fabrics Corporation et al*
- *Whitmire v. Wal-Mart Stores, Inc.*

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THE IMPACT ON EMPLOYERS



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Employer Rights

- Terminations
- Discipline
- Federal Requirements
- State Protections

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Employer Rights

- Zero tolerance – federal grants
- Off duty recreational use protection

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Drug Testing Policies –
Best Practices

- Marijuana testing
- State laws for drug testing

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Drug Testing Policies –
Best Practices

- A typical policy will include:
 - the reason for the drug-free workplace program
 - the procedures for administration of the program
 - employee rights and responsibilities
 - the consequences to the employee for violating the policy
- Written acknowledgement

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Drug Testing Policies – Best Practices

- Most workplace drug testing occurs at one of the following times:
 - pre-employment/post offer testing as a condition of starting employment;
 - reasonable suspicion testing;
 - post-incident/accident testing;
 - random testing;
 - periodic testing; or
 - post-treatment testing.



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Reasonable Accommodations & Medical Marijuana

- Is use of medical marijuana a reasonable accommodation under the ADA?
- What about state laws?

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Doobie Dos and Doobie Don't's

- Doobie Do's -
 - Continue to comply with Federal laws and regulations.
 - Review your state's laws regarding marijuana use and drug testing.
 - Review your drug use and drug testing policies.

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Doobie Dos and Doobie Don't's

- Doobie Don'ts -
 - Give up on your substance abuse prevention program.
 - Ignore DOT and other legally required testing.
 - Assume that marijuana users have no rights.

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TAKE AWAY

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Questions?

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